LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 5 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

Number 891

ALVIN GROVER CONNER,

Petitioner in Certiorari

versus

UNITED STATES OF AMERICA

Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit

WESLEY R. ASINOF
Attorney for Petitioner
419 Atlanta National Building
Atlanta 3, Georgia

IN THE

Supreme Court of the United States

October Term, 1963

Number

ALVIN GROVER CONNER,

Petitioner in Certiorari

versus

UNITED STATES OF AMERICA

Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit

Now comes Alvin Grover Conner, petitioner in certiorari, and petitions this Honorable Court for the writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

Petitioner was indicted in the District Court for the Northern District of Georgia, Atlanta Division, for the offense of conspiracy to violate the Internal Revenue

Laws relating to manufacture, possession, transportation and distribution of distilled spirits without payment of the federal tax. The indictment named the Appellant as the sole defendant, but alleged the names of fourteen other persons as co-conspirators. Appellant entered a plea of not guilty, and a trial was had resulting in a verdict finding him guilty and the Court imposed a sentence of two years in the custody of the Attorney General.

Inasmuch as no question is being raised in this petition as to the sufficiency of the evidence (it being sufficient as a matter of law if believed by the jury) the statement of facts will not include the details of the evidence.

During the trial of the case, and while government witness William Daniel, an alleged co-conspirator, was testifying on redirect examination by Government counsel, the following colloquy took place: — (R. 109)

"Q. Now, Mr. Howard also asked you, asked you did you know Grover Conner, Alvin Conner while you were working with Billy Huddleston, when you were first working with him. Did you know anything about him before you met him?

A. Well, I had heard in card games and conversations.

Q. No, I'm talking about from people you were dealing with, Mr. Huddleston and Mr. Eassy, had you all had any conversations concerning Mr. Conner?

A. Oh, I had took it that he was in the liquor business from the conversations."

Whereupon counsel for the Petitioner then made a motion for a mistrial upon the ground that the question

and answer tended to place the defendant's character in issue without his having first done so, and that it was so prejudicial as to require the grant of a mistrial.

After a further colloquy between the Court and counsel, the motion for mistrial was overruled, and the Court instructed the jury to disregard the answer as being improper.

The United States Court of Appeals for the Fifth Circuit held that the trial judge promptly instructed the jury to disregard the answer, and therefore cured any error and that if any error occurred, it was harmless.

A petition for rehearing was filed and denied by the Court of Appeals.

JURISDICTION

(a) The judgment of the Court of Appeals was entered September 19, 1963. The petition for rehearing was denied February 6, 1964. Jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. 1254 (1), and under and by virtue of 18 U.S.C. 3772 and within the time prescribed in Rule 11 of the Rules of Practice and Procedure.

(b) This petition for certiorari is being filed in this case within 30 days from the date of the judgment denying the petition for rehearing.

(c) The nature of the case and the rulings of the Court were such as to bring the case within the jurisdictional provisions relied upon, and the grounds upon which it is contended that the questions involved are substantial are as follows:

The United States Court of Appeals for the Fifth

Circuit has decided an important question of federal law involving fairness in criminal trials, and the decisions upon the subject are not uniform, and should be settled by this Court.

THE QUESTION PRESENTED

1. The Court committed reversible error in failing and refusing to declare a mistrial on motion of the Appellant, because the answer by the witness placed the character and reputation of the defendant in evidence without the accused first having done so.

APPENDIX

Petitioner herein appends to this petition a copy of the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

WESLEY R. ASINOF
Attorney for Petitioner
419 Atlanta National Building
Atlanta 3, Georgia

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19874

ALVIN GROVER CONNER,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

(September 19, 1963.)

Before CAMERON, and WISDOM, Circuit Judges, and DeVANE, District Judge.

CAMERON, Circuit Judge: The sole question presented by this appeal from a conviction of conspiring to violate the liquor taxing laws is whether the court below committed reversible error in refusing to grant a mistrial "because [an] answer by [a] witness placed the character and reputation of the defendant in evidence, without the accused first having done so." No

question is raised as to the sufficiency of the evidence to support the verdict of guilty rendered by the jury.

In answer to the prosecutor's question relating to whether the witness knew anything about the defendant before he met him, the witness, a co-conspirator but not co-defendant, answered:

> "Oh, I had took it he was in the liquor business from the conversations."

The trial judge promptly instructed the jury to disregard this answer.

It is the general rule that an erroneous admission of evidence is cured by excluding the evidence from the consideration of the jury and directing the jurors to disregard it. *Fahning v. United States*, 5 Cir. 1962, 299 F.2d 579; *Helton v. United States*, 5 Cir., 1955, 221 F.2d 338; *United States v. Simone, et al*, 2 Cir., 1953, 205 F.2d 480; and *Mora v. United States*, 5 Cir., 1951, 190 F.2d 749.

Assuming here that the statement proffered was improper, it is plain to us that the substantial rights of the defendant were not affected. His guilt is clear and error, if any occurred, was harmless. Rule 52(a), F.R.Cr.P., 18 U.S.C.A.

The judgment appealed from is AFFIRMED.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O. La.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,874

D. C. Docket No. 23,047 Crim.

ALVIN GROVER CONNER,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

Before Cameron and Wisdom, Circuit Judges, and DeVane, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

September 19, 1963

Issued as Mandate:

[557]

(Filed 6th day of February, 1964. Eugenia S. Campbell, Dep. Clerk of the United States Court of Appeals.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19874

ALVIN GROVER CONNER,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

(Feb. 6, 1964)

ON PETITION FOR REHEARING

Before CAMERON and WISDOM, Circuit Judges, and DEVANE, District Judge

PER CURIAM

IT IS ORDERED that the appellant's petition for rehearing be, and it is hereby DENIED.

[Judge DeVane participated in the hearing of this case, but died before this opinion was written.]